

**MISSOURI STATE AUDITOR'S OFFICE
FISCAL NOTE (22-080)**

Subject

Initiative petition from Austin Shaffer regarding a proposed constitutional amendment to Article XVI of the Constitution of Missouri. (Received December 6, 2021)

Date

December 23, 2021

Description

This proposal would amend Article XVI of the Constitution of Missouri.

The amendment is to be voted on in November 2022.

Public comments and other input

The State Auditor's office requested input from the **Attorney General's office**, the **Department of Agriculture**, the **Department of Economic Development**, the **Department of Elementary and Secondary Education**, the **Department of Higher Education and Workforce Development**, the **Department of Health and Senior Services**, the **Department of Commerce and Insurance**, the **Department of Mental Health**, the **Department of Natural Resources**, the **Department of Corrections**, the **Department of Labor and Industrial Relations**, the **Department of Revenue**, the **Department of Public Safety**, the **Department of Social Services**, the **Governor's office**, the **Missouri House of Representatives**, the **Department of Conservation**, the **Department of Transportation**, the **Office of Administration**, the **Office of State Courts Administrator**, the **Missouri Senate**, the **Secretary of State's office**, the **Office of the State Public Defender**, the **State Treasurer's office**, **Adair County**, **Boone County**, **Callaway County**, **Cass County**, **Clay County**, **Cole County**, **Greene County**, **Jackson County**, **Jasper County**, **St. Charles County**, **St. Louis County**, **Taney County**, the **City of Cape Girardeau**, the **City of Columbia**, the **City of Jefferson**, the **City of Joplin**, the **City of Kansas City**, the **City of Kirksville**, the **City of Mexico**, the **City of Raymore**, the **City of St. Joseph**, the **City of St. Louis**, the **City of Springfield**, the **City of Union**, the **City of Wentzville**, the **City of West Plains**, **Cape Girardeau 63 School District**, **Hannibal 60 School District**, **Malta Bend R-V School District**, **Mehlville School District**, **Wellsville-Middletown R-1 School District**, **State Technical College of Missouri**, **Metropolitan Community College**, **University of Missouri**, and **St. Louis Community College**.

Assumptions

Officials from the **Attorney General's office** indicated they expect that, to the extent that the enactment of this proposal would result in increased litigation, they expect that their office could absorb the costs associated with that increased litigation using existing resources. However, if the enactment of this proposal were to result in substantial additional litigation, they may be required to request additional appropriations.

Officials from the **Department of Agriculture** indicated no fiscal impact to their department.

Officials from the **Department of Economic Development** indicated they anticipate no impact as a result of the proposed amendment.

Officials from the **Department of Elementary and Secondary Education** indicated no fiscal impact to their department.

Officials from the **Department of Higher Education and Workforce Development** indicated no impact to their department.

Officials from the **Department of Health and Senior Services** indicated lost federal funding is estimated at up to \$1,946,592,434 for fiscal year 2023, up to \$1,966,058,358 fiscal year 2024, and up to \$1,985,718,942 for fiscal year 2025.

A substantial negative effect on small business could result through the Department of Health and Senior Services (DHSS) not having the ability to engage in the standard contracting required to provide federally-funded public health services for Missourians. Examples of these contract include, list is not all-inclusive:

- Child and Adult Care Food Program (CACFP)
- Area Agency on Aging (AAA)
- Home and Community Based Services (HCBS)

DHSS is significantly funded by federal funds that are awarded through the financial assistance (grants) process. The General Assembly (GA) provides the authority to spend federal funds through appropriations. Federal grants are generally awarded with specific federal regulations attached to them. If the GA were not to adopt a rule or regulation authorizing the federal regulation attached to a grant program the federal agency(s) may decline to award the grant or the department may have to forfeit the grant monies. The resulting potential loss of DHSS federal grant awards could be substantial, impacting the health of all Missourians.

For example, any reduction in federal funding jeopardizes their department's capacity to:

- Protect Missouri's citizens from receiving substandard care by regulated providers;
- Provide WIC services;

- Perform chemical and microbiological food and water testing at the State Public Health Laboratory;
- Provide services to prevent premature institutionalization of Missouri's elderly and adults with disabilities;
- Perform food safety inspections); or,
- Perform hospital, long-term care facility and child care safety inspections.

Their department assumes the potential loss of funds could include all of its current federal funds. The most recent budget year (fiscal year 2022) includes approximately \$1,927,319,242 and 962.11 FTE in federal funds, projected to be \$1,946,592,434 for fiscal year 2023. The state may also have to replace lost federal funding with general revenue to continue some vital services for its citizens that are supported, in part or in total, by federal funds.

Officials from the **Department of Commerce and Insurance** indicated this petition, if passed, will have no anticipated cost or savings to their department.

Officials from the **Department of Mental Health** indicated they (DMH) assume an overall unknown fiscal impact based on the following concerns regarding the language contained in this initiative petition.

The initiative petition may have an unknown effect on their department's budget from both state and federal sources and make legal compliance difficult for DMH operations across their department. Their department operates (fiscal year 2022 budget) with federal funds received from various federal agencies totaling approximately \$1.5 billion. Failure to comply could jeopardize funding with the potential impact being between \$0 and up to \$1.5 billion.

Officials from the **Department of Natural Resources** indicated they would not anticipate a direct fiscal impact from this proposal.

Officials from the **Department of Corrections** indicated it is unknown what mandates or executive orders that the state may not comply with so the actual impact is unknown. There could be a fiscal impact if there are monetary stipulations within the mandates or orders. It is also unclear how Section 3 "separate administrative region of the state of Texas" will impact their department if it effects federal funds.

Officials from the **Department of Labor and Industrial Relations** indicated they anticipate no fiscal impact for this initiative petition proposing to amend Article XVI.

Officials from the **Department of Revenue** indicated no impact.

Officials from the **Department of Public Safety - Office of the Director** indicated no impact for all of their department divisions.

Officials from the **Department of Social Services** indicated lost federal funding is estimated at up to \$7,153,702,729 for fiscal year 2023, up to \$7,153,702,729 fiscal year 2024, and up to \$7,153,702,729 for fiscal year 2025.

This initiative petition amends the Missouri Constitution by adding Article XVI to emphasize the Separation of Power between the Federal and State government.

Article XVI

Section 1. -- Duty of Federal Government of the United State to Uphold the Bill of Rights and the U.S. Constitution. Missouri reserves the right to address breaches, both material and immaterial, as it may determine proper, following good faith efforts to reconcile such breaches and allowing the Federal Government a period in which it can remedy its breach.

Section 2. – Identifying breaches by the Federal Government. Lists nine breaches.

Section 3. – Significance of such Breaches. Affirming the State's right to assess the severity and consequences of such breaches. One such remedy for breaches, approved by the voters of this State, is for the State to retain its status as a state of the United States of American but also apply as a lawful "separate administrative region".

Section 4. – The provision of this Article shall not be applicable to the extent superseded by then existing and applicable provision of the United States Constitution.

If the state were to choose to become a "separate administrative region", their department anticipates a loss of federal funding. Appropriated federal funding for fiscal year 2022 is over \$7 billion.

Officials from the **Governor's office** indicated this proposal relating to potential Missouri remedies to federal overreach, including becoming a separate administrative region of Texas, should not fiscally impact their office.

Officials from the **Missouri House of Representatives** indicated no fiscal impact.

Officials from the **Department of Conservation** indicated there is no anticipated fiscal impact (cost or savings) to their department associated with this proposal.

Officials from the **Department of Transportation** indicated this initiative petition will have no fiscal impact to their department/Missouri Highways and Transportation Commission.

Officials from the **Office of Administration** indicated this proposal relating to potential Missouri remedies to federal overreach, including becoming a separate administrative region of Texas, should not fiscally impact their office.

Officials from the **Office of State Courts Administrator** indicated there is no fiscal impact on the courts.

Officials from the **Missouri Senate** indicated they anticipate no fiscal impact.

Officials from the **Secretary of State's office** indicated each year, a number of joint resolutions that would refer to a vote of the people a constitutional amendment and bills that would refer to a vote of the people the statutory issue in the legislation may be considered by the General Assembly.

Unless a special election is called for the purpose, Referendums are submitted to the people at the next general election. Article III section 52(b) of the Missouri Constitution authorizes the general assembly to order a special election for measures referred to the people. If a special election is called to submit a Referendum to a vote of the people, Section 115.063.2 RSMo. requires the state to pay the costs. The cost of the special election has been estimated to be \$7 million based on the cost of the 2020 Presidential Preference Primary.

Their office is required to pay for publishing in local newspapers the full text of each statewide ballot measure as directed by Article XII, Section 2(b) of the Missouri Constitution and Section 116.230-116.290, RSMo. Funding for this item is adjusted each year depending upon the election cycle. A new decision item is requested in odd numbered fiscal years and the amount requested is dependent upon the estimated number of ballot measures that will be approved by the General Assembly and the initiative petitions certified for the ballot. In fiscal year (FY) 2014, the General Assembly changed the appropriation so that it was no longer an estimated appropriation.

In FY19, over \$5.8 million was spent to publish the full text of the measures for the August and November elections. Their office estimates \$75,000 per page for the costs of publications based on the actual cost incurred for the one referendum that was on the August 2018 ballot.

Their office will continue to assume, for the purposes of this fiscal note, that it should have the full appropriation authority it needs to meet the publishing requirements. Because these requirements are mandatory, they reserve the right to request funding to meet the cost of their publishing requirements if the Governor and the General Assembly again change the amount or continue to not designate it as an estimated appropriation.

Officials from the **Office of the State Public Defender** indicated this initiative petition proposing to amend Article XVI will have no fiscal impact on their office.

Officials from the **State Treasurer's office** indicated no fiscal impact to their office.

Officials from **Clay County** indicated they anticipate no costs or savings from this petition.

Officials from **Greene County** indicated there may be cost to their county if voters vote to amend Article XVI with the proposed language in this initiative petition.

It is unknown whether the act to change the state constitution to affirm that Missouri is an "administrative region" separate from the federal government will lead to a potential federal government action to withhold federal funding from Greene County. And, Congress may choose to address such structural changes by law or appropriation, but said Congressional actions are almost impossible to predict. Regardless, they believe it is prudent to anticipate that the passage of this IP may lead to changes to federal funding.

If the passage of this act did change how the State of Missouri is recognized by the United States Government, then it could impact the federal funding that passes through the state to each county. With respect to Greene County, this may constitute a reduction of up to an average of \$3.8 million a year in federal funding.

Schedule of Expenditures of Federal Awards (SEFA) Federal Funds by Year

2005	4,861,230
2006	3,804,280
2007	11,126,685
2008	3,449,841
2009	4,491,565
2010	4,622,335
2011	4,761,512
2012	5,455,036
2013	2,756,343
2014	2,588,470
2015	5,188,450
2016	3,700,688
2017	2,690,369
2018	2,787,614
2019	1,750,943
2020	36,339,759 without CARES the amount would have been 1,806,820

averages about \$3.8 million without the ice storm or the pandemic

The SEFA information was used to quantify the average for total federal funds received by the County of Greene for the past 16 years. Please note that the average does not include any CARES Act funding in 2020 or ice storm funding as part of the 16 year average.

Officials from the **City of Kansas City** indicated this petition would not have a fiscal impact on their city.

Officials from **Metropolitan Community College** indicated no fiscal impact to their college.

Officials from **University of Missouri** indicated if this proposal were to be construed to prohibit the University's compliance with federal laws and regulations, it could result in

finances, penalties, or loss of federal funding in amounts in excess of \$1 million depending on the specific federal program.

The State Auditor's office did not receive a response from **Adair County, Boone County, Callaway County, Cass County, Cole County, Jackson County, Jasper County, St. Charles County, St. Louis County, Taney County, the City of Cape Girardeau, the City of Columbia, the City of Jefferson, the City of Joplin, the City of Kirksville, the City of Mexico, the City of Raymore, the City of St. Joseph, the City of St. Louis, the City of Springfield, the City of Union, the City of Wentzville, the City of West Plains, Cape Girardeau 63 School District, Hannibal 60 School District, Malta Bend R-V School District, Mehlville School District, Wellsville-Middletown R-1 School District, State Technical College of Missouri, and St. Louis Community College.**

Fiscal Note Summary

State governmental entities estimate annual reduced federal funding could be at least \$10.6 billion, but the total potential reduction is unknown. Local governmental entities estimate annual reduced federal funding passed through from the state could be at least \$3.8 million.